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IN THE

**Supreme Court of the United States**

No. 509

October Term, 1938

DENIS J. DRISCOLL, THOMAS C. BUCHANAN,  
RICHARD J. BEAMISH et al.

*Appellants*

v.

EDISON LIGHT & POWER COMPANY, a corporation

*Appellee*

**Motion of Appellants to Advance Argument**

GUY K. BARD,

*Attorney General*

Commonwealth of Pennsylvania

HERBERT B. COHEN,

Counsel for Utility Consumers League of York, Penna.

SAMUEL GRAFF MILLER,

*Assistant Counsel*

EDWARD KNUFF,

*Counsel*

Pennsylvania Public Utility Commission

North Office Building,  
Harrisburg, Pennsylvania.



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*Appellants*

v.

EDISON LIGHT & POWER COMPANY, a corporation

*Appellee*

**MOTION TO ADVANCE**

Guy K. Bard, Attorney General of the Commonwealth of Pennsylvania, and Herbert B. Cohen, Counsel for Utility Consumers League of York, Pennsylvania, Samuel Graff Miller, Assistant Counsel, and Edward Knuff, Counsel for Pennsylvania Public Utility Commission, on behalf of the appellants, move to advance the above entitled cause for hearing on a date prior to January 16, 1939, as may be convenient to the Court.

**STATEMENT OF THE MATTERS INVOLVED**

The Pennsylvania Public Utility Commission (hereinafter referred to as the Commission) on July 27, 1937, issued a report and order pursuant to the provisions of Section 310 of Article III of the Pennsylvania Public Utility Law (Act of May 28, 1937, Pamphlet Laws 1053, Purdon's Pennsylvania Statutes Annotated, 1937 Supplement, Title 66, Section 1150) fixing temporary rates to be charged by Edison Light & Power Company (hereinafter referred to as the Company), for its electric service. The order was calculated to produce an annual reduction of \$435,000 in the gross revenues of the Company.

A bill in equity was then filed by the Company in the United States District Court for the Middle District of Pennsylvania attacking the order of the Commission on substantially the following grounds:

1. That Section 310 of the Pennsylvania Public Utility Law violates the Fourteenth Amendment to the Federal Constitution.
2. That the temporary rates prescribed were confiscatory.
3. That the Commission had insufficiently indicated the bases for its temporary rate findings.

The cause was heard before a three-judge Court specially constituted under the provisions of Section 266 of the Judicial Code (U. S. Code Annotated, Title 28, Section 380), and, on October 15, 1937, the Court permanently enjoined the enforcement of the Commission's order of July 27, 1937, on the sole ground that the Commission had insufficiently indicated the bases for its temporary rate findings. The Court held, by a majority thereof, that Section 310 of the

Pennsylvania Public Utility Law was constitutional in its entirety, and all the judges agreed that the imposition of temporary rates was legal if the mode of imposition and the rates themselves were proper. The decision of the Court is reported at **Edison Light & Power Co. v. Driscoll, et al, 21 Federal Supplement 1.**

Thereafter, on November 30, 1937, the Commission rescinded its order of July 27, 1937, and issued an order designed to comply with the expressions of the Middle District Court, which order imposed temporary rates calculated, as previously, to effect a reduction of \$435,000 annually in the gross revenues of the Company. The Company then brought suit in the United States District Court for the Eastern District of Pennsylvania to enjoin this order of the Commission in the proceeding styled "Edison Light and Power Company, a corporation, v. Denis J. Driscoll, Thomas C. Buchanan, Richard J. Beamish, Guy K. Bard and Donald M. Livingston, individually, and constituting the Pennsylvania Public Utility Commission." A specially constituted Court for the Eastern District of Pennsylvania at Philadelphia convoked under Section 266 of the Judicial Code, and composed of Circuit Judges J. Warren Davis and Joseph Buffington, and District Judge Oliver B. Dickinson, issued a preliminary injunction which was made permanent by final decree entered October 14, 1938.

The Company claimed that Section 310 of the Pennsylvania Public Utility Law, pursuant to which the Commission made its order, was unconstitutional, and that the Commission's order resulted in confiscation of the Company's property. The District Court for the Eastern District of Pennsylvania sustained both of these claims.

**REASONS SUPPORTING MOTION TO ADVANCE**

The matters presented here are of great importance, and the public interest is involved therein. An early decision is desirable as a guide to the Commission in many other proceedings now pending before it, and the following specific reasons are urged in support of this motion:

1. That the presently existing conflict of District Court decisions on the constitutionality of the said Section 310 of the Pennsylvania Public Utility Law makes it impossible for the Commission effectively to administer the provisions thereof.

2. Temporary rates already have been imposed by the Commission in nine (9) cases, pursuant to the provisions of Section 310 of the Pennsylvania Public Utility Law. A list of these cases marked "Exhibit A" is attached hereto and made a part hereof.

3. There are one hundred ninety-one (191) cases pending before the Commission in which temporary rates may be imposed, pursuant to the provisions of Section 310 of the Pennsylvania Public Utility Law. A list of these cases, marked "Exhibit B" is attached hereto and made a part hereof.

4. The instant case has been in litigation for a period of approximately three (3) years, and a speedy conclusion is desirable in the public interest.

5. The Attorney General of the Commonwealth of Pennsylvania and Counsel for the Commission who are intimately familiar with the case, retire from office January 17, 1937. Considerable time would be required by their successors for the adequate preparation of the case for presentation, before this Honorable Court, since the record in the case is very voluminous, com-



prising nearly 900 printed pages of testimony, together with numerous statistical exhibits, and the resulting delay would be highly prejudicial to the public interest.

GUY K. BARD,

*Attorney General*  
Commonwealth of Pennsylvania

HERBERT B. COHEN,

Counsel for Utility Consumers League of York, Penna:

SAMUEL GRAFF MILLER,

*Assistant Counsel*

EDWARD KNUFF,

*Counsel*  
Pennsylvania Public Utility Commission

**"EXHIBIT A"****PENNSYLVANIA PUBLIC UTILITY COMMISSION**

List of Public Utilities Upon Which Temporary Rates Have  
Been Imposed as at November 3, 1938

*Name of Utility*

*Number of  
Customers  
or Patrons  
in Penna. at  
Dec. 31, 1937*

*Amount of  
Annual  
Reduction  
Ordered*

**ELECTRIC UTILITIES**

Duquesne Light Company .....	335,735	\$1,250,000
Edison Light & Power Company ..	30,026	435,000
Metropolitan Edison Company .....	116,293	795,900
Pennsylvania Power & Light Co. ...	390,907	2,300,000
Philadelphia Electric Company .....	696,319	3,107,000
Scranton Electric Company, The ...	81,379	560,000
Solar Electric Company .....	1,694	11,300
<b>Total (7 Utilities) .....</b>	<b>1,652,353</b>	<b>8,459,200</b>

**WATER UTILITIES**

Beaver Valley Water Company, The	10,192	29,500
Philadelphia Suburban Water Co. ...	79,635	125,000
<b>Total (2 Utilities) .....</b>	<b>89,827</b>	<b>154,500</b>
<b>Grand Total .....</b>	<b>1,742,180</b>	<b>\$8,613,700</b>

**"EXHIBIT B"**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

List of Public Utilities Upon Which the Commission Has  
Instituted Formal Rate Proceedings as at November 3, 1938

*Name of Utility*

*Number of  
Customers  
or Patrons  
in Penna. at  
Dec. 31, 1937*

**ELECTRIC UTILITIES**

Abington Electric Company .....	4,056
Bradford Electric Company .....	11,461
Erie Lighting Company .....	17,699
Glen Rock Electric Light & Power Co. ....	3,491
Harvey's Lake Light Company .....	1,681
Keystone Public Service Company .....	15,836
Northern Pennsylvania Power Co. ....	24,323
Pennsylvania Edison Company .....	64,364
Pennsylvania Electric Company .....	102,728
Renovo Edison Light & Power Co. ....	2,195
West Penn Power Company .....	203,607
Total (11 Utilities) .....	451,441

**MANUFACTURED GAS**

Athens and Sayre Gas Company .....	1,868
Northern Liberties Gas Company .....	478,110
Philadelphia Gas Works .....	
Total (2 Utilities) .....	479,978

**NATURAL GAS**

Columbia Natural Gas Company .....	23,584
Equitable Gas Company .....	181,472
Manufacturers Gas Company .....	5,852
Manufacturers Light & Heat Company .....	112,616

<i>Name of Utility</i>	<i>Number of Customers or Patrons in Penna. at Dec. 31, 1937</i>
Pennsylvania Gas Company .....	37,893
Peoples Natural Gas Company .....	124,304
T. W. Phillips Gas and Oil Co. ....	24,369
United Natural Gas Company .....	53,212
Acme Natural Gas Company	
Allegheny-Butler Gas & Oil Company	
Allegheny Gas Company	
Ambridge Gas Company	
Anderson Natural Gas Company	
Beaver-Butler Gas Company	
Bellewood & Monongahela City Natural Gas Company	
Bessemer Natural Gas Company	
Bole, S. C. Estate	
Brown, H. R.	
Cadogan Gas Company	
Citizens Gas Company	
Citizens Gas & Fuel Company	
Clarion Natural Gas Company	
Conewago Gas Company	
Conquer, S. J.	
Cook, Lora H.	
Crosby Gas Company	
Dewey Trust Estate	
East Brady Gas-Fuel Company	
Eisworth-Hefren Company	
W. H. Emery Estate	
Fairview Gas Company	
Fasenmyer, George R.	
Fidelity Gas Company	
Finessy & Company	
Ford, H. L.	
Fowler, J. D. & Company	
Gettysburg Gas Corporation	
Hanratty Domestic Fuel Supply	

*Name of Utility*

Hazlehurst Gas Company  
Hoch Brothers Natural Gas Company  
James City Gas Company  
Jefferson County Gas Company  
Kane Gas Light & Heating Company  
Kaylor Natural Gas Company  
Kellettville Gas Company  
Laughner Oil & Gas Company  
Lawsonham Oil & Gas Company  
Ludlow Gas & Electric Company  
Marienville Gas Company  
McCullough Gas Company  
McDade Gas Company  
McKean Natural Gas Company  
Mercer Gas Light & Fuel Company  
Milesgrove Gas Company, Ltd.  
Millport Gas Company  
Minard Run Oil Company  
Morris, Jacob  
Mountain Gas Company  
Mt. Jewett Gas Company  
Mt. Morris Gas Company  
New Freeport Natural Gas Company  
Nichols, Dollie & Geo. E. McGill Estate  
Nixon & Company  
North East Heat & Light Company  
Pike County L. & Pr. Company  
Prospect Oil & Gas Company  
Reidsburg Natural Gas Company  
Revere Natural Gas Company  
Rickenbrod, A. A.  
Russell, W. C. & Company

*Name of Utility*

Russellton-Curtisville Gas Utilities	
Saxonburg Heat & Light Company	
Sergeant Gas Company	
Siggins, H. A. Estate	
Slippery Rock Heat & Light Company	
Smith, Walter & Bros.	
State Line Gas Company	
Staughton, S. R.	
St. Nicholas Oil & Gas Company	
St. Petersburg Speechley Oil & Gas Co.	
Susquehanna Gas Company	
Sykesville-DuBois Oil & Gas Company	
Taylorstown Natural Gas Company	
Tidal Gas Company	
Tionesta Gas Company	
Triangle Company of Pennsylvania	
Turner Gas & Oil Company	
Union Heat & Light Company	
Vance, George B. Estate	
Van Guilder, Carl and Vivian	
Victor Gas Company	
Vogt, S. A.	
Warren County Gas Company	
Warrendale Oil & Gas Company	
Waynesburg Home Gas Company	
Westmoreland Gas Company	
Wildwood Gas Company	
Empire Gas & Fuel Company .....	127,089
 Total (98 Utilities) .....	 690,391

*Name of Utility**Number of  
Customers  
or Patrons  
in Penna. at  
Dec. 31, 1937***TELEPHONE**

The Bell Telephone Co. of Penna. ....	1,206,662
Home Telephone Company of Ridgway .....	3,713
Pennsylvania Telephone Coporation .....	55,916
<b>Total (3 Utilities) .....</b>	<b>1,266,291</b>

**WATER UTILITIES**

Bakerton Water Company .....	210
Belle Vernon Water Company .....	1,580
Brownsville Water Company .....	2,936
California Water Company .....	999
Chester Water Service Company .....	17,486
Citizens Water Co. of Washington .....	12,081
Clymer Water Service Company .....	2,548
Corry Water Supply Company .....	1,851
Delafield Water Company .....	215
East McKeesport Water Company .....	914
Edgeworth Water Company .....	1,163
Elizabethville Water Company .....	416
Ellwood Consolidated Water Co. ....	3,592
Freeland Water Company .....	2,101
Garrett Water Company .....	216
Johnstown Water Company .....	19,718
Lewistown-Reidsville Water Company .....	7,028
Mt. Jewett Water Company .....	329
Penelec Water Company .....	192
Pennsylvania Water Company .....	24,690
Pittsburgh Suburban Water Service Co. ....	13,967
Portage Township Water Company .....	1,366
St. Marys Water Company .....	1,708
Sayre Water Company .....	3,361

*"Exhibit B"*

<i>Name of Utility</i>	<i>Number of Customers or Patrons in Penna. at Dec. 31, 1937</i>
Scranton-Spring Brook Water Serv. Co. ....	125,072
Sheffield Water Company .....	429
Shenango Valley Water Company .....	11,550
South Pittsburgh Water Company .....	43,759
Sunbury Water Company .....	4,776
Tionesta Water Supply Company .....	276
Whitaker Water Company .....	375
York Suburban Water Company .....	18,420
Total (33 Utilities) .....	325,740

**TRANSPORTATION**

Baltimore and Ohio Railroad Co.  
 Beaver Valley Motor Coach Company  
 Edwards Motor Transit Co., Inc.  
 Harrison-Shields (Trucking)  
 Pennsylvania Greyhound Lines, Inc.  
 Pennsylvania Railroad Company  
 Pennsylvania Truck Lines, Inc.  
 Pittsburgh Motor Coach Company  
 Pittsburgh Railways Company  
 Pittsburgh Transportation Company  
 Reading Company  
 Reading Coach Company  
 Valley Transportation Company  
 Yellow Cab Company of Philadelphia  
 Yellow Cab Company of Pittsburgh  
 Carnahan Transfer & Storage Company  
 Daniels Taxi & Transfer Company  
 Clyde D. Duffee  
 Michael J. Flanigan  
 Girard Transportation Company  
 Hanna Transfer Company  
 Harrisburg Taxi & Baggage Company



*"Exhibit B"*

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*Name of Utility*

S. A. Heath  
Independent Taxi Service  
S. T. Karns Sons Company  
Lackawanna Taxi Company, Inc.  
Laurel Line Taxicab Company  
B. Frank Miller  
Albert McCutcheon  
H. B. Neff  
Penn Harris Taxi Service Company  
Pennsylvania Transfer  
Public Service Taxi Company  
Rapid Transfer Company  
Reading Transportation Company  
Richmond Bus Company  
J. E. Reimer  
Louis M. Rodgers  
H. E. Sterling  
Tom Ford Taxi Service  
Leonard H. Turner  
Williamsport Trucking Service  
(42 Carriers)

*MISCELLANEOUS*

Aronimink Park Heating Company .....	612
Sunbury Bridge Company .....	526